

Application No. 09/851,402
Amendment "G" dated March 13, 2006
Reply to final Office action mailed January 13, 2006

REMARKS

Applicants respectfully request reconsideration and allowance of the above-identified patent application. Claims 1-29 remain pending, wherein claims 1, 12, 16, and 25 have been amended.

The Office action rejects all of the current claims (including independent claims 1, 12, 16, and 25) under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 5,937,331 to Kalluri et al. ("Kalluri") in view of U.S. Patent No. 6,151,709 to Winkel ("Winkel"), and further in view of U.S. Patent No. 5,802,299 to Logan et al. ("Logan") and U.S. Patent No. 5,802,592 to Chess et al. ("Chess").¹ For at least the following reasons, Applicants respectfully traverse these grounds of rejection.

Applicants note for the record that this application claims priority to, among others, U.S. Patent No. 5,940,074 to Britt, Jr. et al. ("Britt"), which was filed on November 22, 1996. See Specification, p. 2, ll. 3-11; Filing Receipt; *Britt*. Support for the subject matter claimed in this application may be found throughout *Britt*, particularly beginning at line 20 of column 7 and continuing through line 11 of column 10. *Winkle*, however, was filed on February 13, 1998 with no apparent claim to any foreign or domestic priority, which does not predate Applicants' priority date of at least as early as November 22, 1996. Applicants respectfully note that in response to Applicants' previous recorded claim of priority in "Amendment B" filed March 12, 2004 (i.e., in the Office action dated June 4, 2004 and Paper No./Mail Date 15), the Examiner appears to concur with the analysis that Applicants do have claim to priority to at least the above cited *Britt*. Accordingly, *Winkle* cannot be considered prior art.²

Applicants also respectfully note that support for the amendments filed in Amendment "C" dated September 7, 2004 may be expressly or implicitly found in *Britt*, e.g., col. 8, ll. 3-4.³

¹ Although the prior art status of at least some of the cited art is not being challenged at this time, Applicants reserve the right to do so in the future. Accordingly, any arguments made herein should not be construed as acquiescing to any prior art status or asserted teachings of the cited art.

² Applicants note that they tried to overcome the previous rejection from the Office action dated March 1, 2005 by amending the claims. Although Applicants respectfully maintain that the current Application is patentably distinct over the alleged prior art of record, in the interest of expediting prosecution Applicants are now challenging the prior art status of the *Winkle* reference. Further, Applicants respectfully note that although the prior art status was not previously challenged in Amendment "I" dated October 14, 2005; Applicants reserved the right to challenge such status as noted in the second footnote of the communication.

³ Applicants respectfully note that M.P.E.P. § 2163.02 states that "[t]he subject matter of the claim need not be described literally (i.e., using the same terms or *in haec verba*) in order for the disclosure to satisfy the written description requirement." Accordingly, under *Vas-Cath, Inc. v. Mahurkka*, 935 F.2d 1555, 1563-64, 19 USPQ2d

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Accordingly, such amendments should not be considered to have adjusted the above-identified priority claim.

Because *Winkle* was not proper prior art as cited by the previous Office action, Applicants respectfully request withdrawal of the finality of the current Office action. Applicants also note that the claims have been amended to their previous form prior to Amendment "F" dated October 14, 2005, which was said to have necessitated the new grounds of rejection. Accordingly—because Applicants have put the claims into a form previously considered by the Office—any future correspondence that relies on newly cited art as allegedly rendering Applicants' current claims anticipated or otherwise unpatentable should not be said to have been necessitated by Applicants' amendments. In other words, Applicants respectfully submit that a new rejection (if any) relying on newly cited should not be made final in the next communication.

In view of the foregoing, Applicants respectfully submit that all rejections of record are improper and should be withdrawn. Accordingly, Applicants respectfully submit that the present application is in condition for allowance, and notice to this effect is earnestly solicited. Nevertheless, should any question arise in connection with this application or should the Examiner believe that a telephone conference with the undersigned would be helpful in resolving any remaining issues pertaining to this application, the undersigned respectfully requests that he be contacted at +1.801.533.9800.

Dated this 13th day of March, 2006.

Respectfully submitted,

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1111, 1117 (Fed. Cir. 1991), the question posed in determining if Applicant has satisfied the written description requirement is has the Applicant "convey[ed] with reasonable clarity to those skilled in the art that, as of the filing date sought, he or she was in possession of the invention, and that the invention, in the that context, is whatever is now claimed."